BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation and Related Issues.	Rulemaking 13-11-005 (Filed November 14, 2013)

COMMENTS OF MARIN CLEAN ENERGY TO RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SEEKING INPUT ON APPROACHES FOR STATEWIDE AND THIRD-PARTY PROGRAMS

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Pursuant to the May 24, 2016 *Ruling of Assigned Commissioner and Administrative Law Judge Seeking Input on Approaches for Statewide and Third-Party Programs* ("Ruling"), Marin Clean Energy ("MCE") respectfully submits the following comments and responds to the specific questions included in the Ruling.

I. INTRODUCTION

MCE commends the Commission for addressing fundamental questions related to the administration of ratepayer energy efficiency ("EE") funds. MCE appreciates the opportunity to provide a response to the significant proposals in the Ruling. MCE addresses how programs should be coordinated among Program Administrators ("PAs") and particularly between local governments, Statewide approaches, and Third Party Programs. MCE also addresses a number of potential unintended consequences of the proposals in the Ruling including programs focusing on low hanging fruit, losing out on the potential for integrated solutions, and avoiding stranded savings.

Summary of Recommendations:

- Designate Community Choice Aggregators ("CCAs") as default PAs within their service area.
- Enable Regional Energy Networks ("RENs") to elect which programs they deliver.
- Adopt the proposal to create a statewide lead for Local Government Partnerships ("LGPs") and local government implementors as proposed in comments from the Local Government Sustainable Energy Coalition ("LGSEC").
- Define Statewide Programs as upstream[1] and midstream[2] efforts.
- Limit incentives for upstream and midstream efforts to those technologies that do not require technical assistance.
- Define Third Party Programs as downstream[3] efforts.
- Address the cost-effectiveness implications of changes to Statewide and Third Party Programs by providing attribution for those activities or through changes to the methodology for determining cost effectiveness.
- Create a statewide data platform to improve successful program delivery and consistency in evaluating progress of the ratepayer funded EE programs.

[1] Upstream activities should only include work with manufacturers to develop products that maximize energy efficiency.
[2] Midstream activities should only include work with distributors or retailers to drive market adoption of energy efficient products.
[3] Downstream programs are those that deliver products or services directly to end-use customers (e.g. mail-in rebates, building retrofits, and technical assistance).

Without these recommendations, it is unclear what programmatic opportunities remain for CCAs and other local government PAs to leverage their strong connections to the community and ability to locally tailor programs.

II. MCE RESPONSES TO SPECIFIC QUESTIONS RELATED TO THE RULING

A. Questions Related to Overall Regulatory Framework for Statewide and Third-Party Programs

Question 1: Should the Commission give additional guidance beyond the broad outlines in D.15-10-028 for the Rolling Portfolio Cycles and Sector Business Plans to the program administrators in the areas of statewide and third-party programs prior to submission of the Sector Business Plans in late 2016? Or would it be preferable to have the Commission wait to evaluate proposals brought forward in the Business Plans by the program administrators? Explain in detail the rationale for your preferred approach.

The Commission should provide additional guidance in advance of Business Plan submissions to avoid the need to update Business Plans. Major policy changes in response to proposals in a single PA's Business Plan filing (e.g. rules addressing program overlap with proposed Third Party Programs) may necessitate updates to other PAs' Business Plans, which can be costly and time consuming for the Commission, stakeholders, and PAs. Additionally, clear guidance describing what program activities are available to each PA should be provided before Business Plans are filed to focus the development of Business Plans and avoid the need to rework them after filing. Early guidance will help avoid unnecessary expenditures of time and resources to rework a Business Plan.

Question 2: If you prefer the Commission to give guidance prior to the submission of Business Plans, what level of guidance should be given? Explain in detail.

Guidance on Program Overlap

As drafted, the Ruling leaves many questions about the possible overlap between different program types. To ensure efficient program administration, the Commission should accept MCE's outstanding proposal to become the default PA for EE programs in its service area.[4] The Commission should provide guidance addressing program overlap among multiple PAs (i.e. investor-owned utilities ("IOUs"), CCAs, and RENs) and among multiple programs (e.g. Statewide Programs, Third Party Programs, and other program activities).

The Commission should designate CCAs as default PAs within their service areas for all downstream programs, including those bid out to Third Parties. This would support the right of CCAs to determine which customer sectors and which intervention strategies they serve with their programs. Duplicative offerings from other PAs would need to avoid delivering programs in the CCA's service area or enter a bilateral agreement with the CCA to deliver programs.

The California Public Utilities Code supports CCAs serving the role of default administrator: CCAs have statutory right to administer EE programs[5] and independent jurisdiction over procurement.[6] MCE has that responsibility for approximately 80% of the

[4] The proposal for how the default administrator status would operate with Statewide and Third Party Programs is included in the responses to Questions 3, 19, and 20 in these comments.
[5] Cal. Pub. Util. Code § 381.1.
[6] "A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute." Cal. Pub. Util. Code § 366.2(a)(5).

accounts within its service area. Since EE is the first resource in the loading order,[7] CCAs should be designated as the default PA for that primary procurement resource in their service area.

In addition to the statutory basis, there are a number of public policy justifications for CCAs to serve as the default PA. CCAs are local governments with deep connections to the communities they represent. These connections include local accountability through the governance structure[8] and enable CCAs to tailor programs to meet the needs of their community. Under the proposals in the Ruling, there will be a lack of diversity in implementors and program design for certain activities. CCAs acting as default administrators can serve as laboratories for innovative program design. As discussed in more detail in response to Questions 8 and 13 below, many program activities benefit from local tailoring. Establishing CCAs as the default PA will preserve programmatic opportunities to leverage their strong connections to the community and ability to locally tailor programs.

To provide additional guidance related to possible program overlap, the Commission should specify a discrete set of customers that are intended to be served with the updated Statewide and Third Party Programs and should specify whether these customers are only eligible for the Statewide or Third Party programs. The Commission should also specify the program activity intended for Statewide and Third Party Programs, including whether those

[7] Cal. Pub. Util. Code § 454.5(b)(9)(C) indicates: "the electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible." See also State of California Energy Action Plan I, 2003 at p. 4 (defining a loading order with energy efficiency as the primary resource); and the Energy Efficiency Policy Manual at p. 1 (noting energy efficiency is a procurement resource and first in the loading order).

[8] MCE is governed by a Board of Directors composed of locally elected officials representing each member jurisdiction.

programs will be expected to provide integrated solutions[9] or focus on discrete technology areas (e.g. commercial lighting). This guidance will help focus PAs on developing a Business Plan with the appropriate scope of activities.

The Commission should also provide guidance that addresses program overlap for all local government EE programs. As with CCAs, other local governments have similar connections to their communities that enable them to deliver tailored and innovative EE programs. CCAs, RENs, LGPs, and local government implementer programs should be preserved under any changes to the Statewide and Third Party Programs. These entities are well coordinated with local government climate action planning aimed at achieving the state's greenhouse gas reduction goals and can leverage the full spectrum of local government resources. Many of these entities have effectively served hard to reach markets. Local governments are also charged with implementation of the building energy codes; and leveraging this capacity will help to strengthen permit compliance. Local government PAs also lack a profit motive resulting in less contention with ex post review and Energy Savings Performance Incentive ("ESPI") awards. Local governments are well situated to combine multiple resource offerings, tailor programs to the unique needs of their communities, and strengthen compliance with the Title 24 building energy codes. Local governments should be empowered to continue to deliver EE programs while achieving broader state goals.

In the guidance, the Commission should afford RENs a similar opportunity to CCAs to select the programs they deliver in their service area in coordination with CCA programs. RENs should retain authority over program design and retain the ability to perform implementation

[9] Including the resources relevant to the Integrated Distributed Energy Resources proceeding (R.14-10-003).

activities. The Commission should also invite new RENs to form. LGPs and local government implementors should be continued and supported under a statewide local government lead as described in LGSEC's opening comments to the Ruling.

Guidance on Cost Effectiveness

The Commission should provide guidance for CCA and REN PAs on how to achieve cost-effective portfolios under the proposals in the Ruling. Many of the program activities described in the Ruling are very cost-effective programs,[10] including industrial, large commercial, upstream, and midstream activities. If the Commission decides to preclude certain PAs from performing these activities, it should also provide guidance on how to address the resulting difficultly in achieving a cost-effective portfolio.

MCE provides four potential solutions the Commission could adopt to address the resulting cost-effectiveness challenges. The Commission could: (1) apply the cost-effectiveness analysis to the portfolio of programs for the combined, total portfolio of ratepayer funded programs rather than for each PA alone; (2) replace the TRC test with the Program Administrator Cost ("PAC") test; (3) provide attribution to each PA for the Statewide and Third Party activities occurring within their service area – also creating an incentive for PAs to drive customers to those programs; or (4) adopt a more granular approach to cost effectiveness that reflects the limitations on PAs' abilities to provide comprehensive programs (e.g. evaluating cost effectiveness by customer sector). Each of these solutions would help address the cost-

[10] Southern California Edison's Budget and Savings Placemat for 2013-2014 lists the statewide industrial program at a 2.79 Total Resource Cost ratio ("TRC"), the statewide lighting program at a 2.39 TRC, and the statewide Commercial program at a 2.02 TRC. These high TRCs are in stark contrast to the residential program which is currently at a 1.0 TRC; the only program listed in the residential portfolio with a TRC greater than 1 is the Multifamily Energy Efficiency Rebate program, currently slated in the Ruling as a Statewide program. This placemat is available at: http://eestats.cpuc.ca.gov.

effectiveness challenges that arise from precluding CCAs and RENs from delivering comprehensive programs.

Question 3: How should any Commission requirements for statewide and/or third-party approaches apply to non-utility program administrators (e.g., community choice aggregators (CCAs), CAEATFA, the Regional Energy Networks (RENs), CSE, etc.)?

These approaches should not preclude CCA PAs from serving all customer sectors with comprehensive programs. The best way to ensure this is to designate CCAs as default PAs as discussed in the response to Question 2 above. RENs should similarly be allowed to elect which customers and intervention strategies to include in their programs, with the exception of upstream and midstream programs as described further below.

Due to the challenges with the definition of Statewide, discussed in greater detail in response to Questions 8 and 9 below, those programs should be limited to upstream and midstream activities. Upstream activities should only include work with manufacturers to develop products that maximize EE. Midstream programs should only include work with distributors or retailers to drive market adoption of energy efficient products. Under this definition for Statewide activities, CCAs will coordinate with, but will not need to administer or implement these programs. As discussed in response to Questions 19 and 20 below, Third Party Programs should be limited to downstream programs. Downstream programs should only include those that deliver products or services directly to end-use customers (e.g. mail-in rebates, building retrofits, and technical assistance). Under this definition, CCAs should have default administrator status. In the event a Third Party implementor won the bid for the entire commercial sector, it would need to work in partnership with a CCA to deliver a program in the

CCA's service area. The CCA would have the option to administer its own programs that parallel or diverge from the third party program design.

Question 4: What type of showing should the Commission require for any Business Plan proposal that addresses statewide and/or third-party approaches? (e.g., rationale, program logic model, relationship to other parts of the portfolio, definition of designer/implementer/evaluator, proportion of the budget, bid solicitation protocols, etc.). Describe in detail.

MCE offers no comments on this question at this time.

Question 5: Are there aspects of the current statewide programs approach that are effective and should be continued? Explain.

MCE offers no comments on this question at this time.

Question 6: Are there aspects of the current third-party programs approach that are effective and should be continued? Explain.

MCE offers no comments on this question at this time.

Question 7: How should the Senate Bill 350 requirements for market transformation programs and pay-for-performance programs factor in to our policies for statewide and third-party programs?

The Commission should create a statewide data platform to ensure consistency and scale for data collection and associated analysis related to ratepayer-funded EE programs, including market transformation efforts. The data platform should be administered by a Third Party (i.e. a non-IOU entity) following a solicitation and include, but not be limited to, the following data sets: (1) energy usage information – including the California Energy Commission ("CEC")

benchmarking information; (2) standardized savings claims, such as DEER[11] values and other standardized assumptions (e.g. operating hours, guidance on weather normalization, etc.) – which could be developed by the California Technical Forum ("CalTF"); (3) baseline data, metrics and tracking for market transformation; (4) prior program participation information in ratepayer-funded EE programs; (5) locational value to facilitate appropriate market pricing of distributed energy resources ("DERs"); and any other relevant data sets including those from publicly owned utilities ("POUs"). The platform may have varying levels of permissions for various entities including policymakers, regulators, and PAs. This platform could build on the work to create the EE Stats portal and could be combined with the DEER database, the CalTF technical resources manual ("TRM"), the work overseen by the Energy Data Access Committee, and any tools necessary to support the CEC benchmarking efforts. This platform will help PAs and other stakeholders gain new insights to design and track market transformation and other important strategic interventions. This standardized data platform could also facilitate the scaling up of pay for performance programs in compliance with Assembly Bill 802 (2015) by providing consistency in savings claims and information on market performance.

B. Questions Related to the Proposals/Options Outlined in this Ruling

1. Statewide Programs

Question 8: Is the general outline of the proposal in this ruling for statewide programs workable? Why or why not? Explain.

The Ruling's proposal is unworkable because it lacks clarity in the scope of the Statewide Programs. The Ruling provides a new definition of Statewide Programs for the sake of clarity.[12] However, the definition is unclear about which activities and which customers are intended for

[11] DEER is the acronym for the Database for Energy Efficient Resources.
[12] Ruling at p. 3.

Statewide Programs. The list of activities by customer sector that are tentatively slated for Statewide Programs[13] could be read broadly to include all customers and related activities in the listed sectors. The Ruling attempts to confine the list of customers through identifying some bright lines such as whether the customer has a chain of locations.[14] However, the clarity is lost with the inclusion of "other customers of a similar nature."[15] It is also not necessarily true that a statewide approach is appropriate for chains. A chain restaurant may have two or three locations in a single city making it no more fit for a statewide approach than a restaurant with a single location. This lack of clarity is unavoidable due to the diversity of customers served by EE programs. To ensure clarity, Commission should avoid defining the scope of Statewide Programs using customer type.

The Commission should define the scope of Statewide Programs as upstream and midstream efforts. While, several listed activities appear inappropriate for a consistent approach statewide because they have local components that vary by geography (e.g. California Advanced Homes Program and local building ordinances, workforce readiness and Zero-Net Energy ("ZNE") strategies),[16] the upstream (at the manufacturer level) and midstream (at the distributor or retailer level) activities are a very good fit. These efforts, when pursued at the statewide level will likely reduce administrative costs and increase savings as compared to the regional efforts underway today. These efforts are also discrete from downstream activities meaning that a clear line can be drawn for the purposes of defining Statewide Programs. The Commission should

[13] Ruling at p. 5-7.
[14] Ruling at p. 3.
[15] Ruling at p. 3.
[16] These are discussed in greater detail in response to Question 13 below.

eliminate the lack of clarity in the scope of Statewide Programs by defining them as all upstream and midstream efforts.

While this definition of Statewide provides simplicity and allows for coherent coordination, upstream and midstream efforts should be limited to offering incentives for those technologies which are truly "off the shelf" technologies. Upstream and midstream incentives are not a good match for measures which require technical assistance to properly install. For example, heating, ventilation, air conditioning and variable frequency drive improvements or retrofits provide the most savings when installed by a trained, qualified professional and thus are more ideally delivered in the context of a downstream program. This also ensures that savings associated with these measures balance the cost of providing the technical assistance, helping to ensure a more cost effective program design.

Question 9: Do you agree with the proposed definition of "statewide" given in this ruling? Why or why not?

Improved clarity in the definition for Statewide approaches would address the challenges discussed in response to Question 8. The Commission should limit Statewide approaches to upstream (at the manufacturer level) and midstream (at the distributor or retailer level) approaches. The Commission should also provide the guidance about which technologies are appropriate for upstream and midstream incentives discussed in the response to Question 8. This clear delineation will create certainty for PAs about which customers they can serve with non-Statewide programs. It also provides clarity about what programmatic activities are intended to be Statewide.

Question 10: Are there specific actions that should be taken to collaborate with the California Energy Commission (regarding its Existing Buildings Energy Efficiency Action Plan) and/or with the publicly-owned utilities to further advance the idea of truly statewide programs?

The Commission should initiate the collaboration through a joint workshop with the CEC. The Commission should also develop a common data platform (as discussed in the response to Question 7 above) to standardize access to energy usage data, savings estimates, and other information. This coordination could be an assigned role for a statewide market transformation entity. The CalTF is an ideal forum for this standardization process as it is currently working to standardize savings claims among POUs and Commission authorized PAs.

Question 11: Should the current IOU lead administrators for the statewide program areas remain the same or be changed?

The Commission should adopt the proposed definition of Statewide as discussed in response to Questions 8 and 9 above, which may eliminate the need for sector-based statewide lead administrators. While sector-based leads may still be appropriate under MCE's proposed definition, some sectors may be consolidated under a single PA if the efforts are limited to upstream and midstream. Additionally, MCE supports the proposal outlined in LGSEC's comments to create a lead local government administrator for LGPs and local government implementors.

Question 12: How should community choice aggregator and regional energy network areas be handled, and what should be the role of those entities with respect to interactions with statewide programs?

(See response to Questions 2 and 3 above)

Question 13: Are there programs, subprograms, or other functions that should be added or removed from the list of statewide programs to be assigned for non-utility competitively-bid implementation contracts? Be specific and provide your rationale.

The Commission should confine Statewide programs to upstream and midstream activities (see response to Questions 3, 8, and 9 above). The downstream (at the end-user level) programs are too difficult to clearly divide between those appropriate for a statewide approach and those with the need for tailored or local approaches.

However, if the Commission includes downstream program activities within the definition of Statewide, it should make the following adjustments in the scope of the proposal:

(1) Some of the Residential activity should be removed:

- ZNE requires a regional approach. The diversity of building stock, readiness of the workforce, and adoption rate of customers precludes a standardized customer experience.
- If the Multifamily Energy Efficiency Rebates catalogue is managed by a statewide entity, it will need to have local variations to account for geographic differences (e.g. climate zones). The catalogue should be used as a resource for customers, contractors, and PAs but should not preclude any downstream multifamily program activities.

- The California Advanced Homes Program and New Construction may be inappropriate for a statewide approach for the same reasons a ZNE program would be difficult at a statewide level (e.g. workforce readiness and customer adoption rates as well as individual climate variations and local building ordinances).

(2) Small and Mid-sized commercial should be removed from statewide approaches because they are harder to reach, have highly fragmented savings opportunities, and a wide diversity in needs for which a uniform design is inappropriate.

(3) Large commercial, industrial, and agricultural customers should be eligible for Statewide programs, but not disallowed from participating in local programs delivered by local government EE PAs and implementors.

(4) Financing should be available consistently throughout the state on the same terms, but should not preclude opportunities for local pilots. Financing strategies should be designed and funded on a statewide basis to provide low lending rates and simplicity for implementors. Statewide financing should be available for participants in any program (e.g. Statewide, local, or Third Party). The Commission should still allow local and regional pilots to try new approaches.

(5) Lighting; Heating, Ventilation, and Air Conditioning; and Emerging Technologies should be removed from the Statewide list. The Commission should avoid programs and implementors focused on a single technology type because it: (1) creates silos; (2) eliminates opportunities to leverage customer acquisition expenditures to maximize savings and deliver integrated solutions;[17] and (3) leads to sweeping low-hanging fruit. The Commission should

[17] Including the resources relevant to the Integrated Distributed Energy Resources proceeding (R.14-10-003).

provide opportunities to articulate local programs that include these technologies, especially with emerging technologies.

(6) Codes and Standards ("C&S") should be limited to allow for opportunities to articulate local C&S programs, particularly in the context of the building code. Some jurisdictions have adopted more aggressive standards and many have resource constraints which limit the ability of building officials to successfully implement statewide codes and standards. These resource constraints will vary from region to region. For example, some jurisdictions may struggle with housing sufficient staff to ensure timely permitting, which serves as a disincentive to compliance. Other jurisdictions may find gaps in workforce readiness. Finally, while there are statewide standards, there may also be local building standards. Those local components to C&S preclude a uniform delivery across the state.

Local C&S programs should be authorized to provide more resources for local governments to determine the right way to conduct trainings and distribute training funds for their area. These programs should also support efforts and provide resources to improve permit compliance (e.g. tools to streamline permitting). The Commission could have a consistent statewide approach to the training process, but should allow for local delivery and local add-ins. A statewide approach to support local governments in improving compliance should be overseen by a lead local government entity like the one proposed in LGSEC's comments.

(7) Integrated Demand Side Management ("IDSM") should be removed from Statewide to ensure successful programs. IDSM will be most successful when the entity providing the solutions has a strong relationship with the customer. This allows for: (a) phasing projects over time through a continued relationship; (b) reengaging a customer for a subsequent project; and (c) earned trust which may reduce resistance to adding to the scope of a project or could result in

repeat business. A statewide implementer may have difficulty maintaining a strong relationship with the customer due to their broad footprint and potential for turnover among subcontractors. Additionally, the lead PA may be removed (e.g. by geography or interface with the program) from the customer relationship. These attributes of the proposed Statewide approach undermine the ability to maximize IDSM across the state.

The Rulemaking 14-10-003 is scoped to include the development of sourcing mechanisms for integrated resources. The EE Rulemaking proceeding[18] could determine whether each sourcing mechanism is appropriate for inclusion in Statewide or non-Statewide programs.

(8) Workforce Education and Training should also allow for local approaches. While there should be a consistent set of statewide standards, there should also be an opportunity for local governments to articulate specific community needs and propose program designs. There is a high diversity in workforce needs and training organizations across the state (e.g. community colleges, high schools, and local training organizations). Consistent requirements for workforce across the state are reasonable, but program delivery relies upon coordination at the local government level.

(9) Marketing Education and Outreach ("ME&O") should be limited. The statewide ME&O efforts should be continued but should not subsume local ME&O.

Question 14: Should the treatment of programs and subprograms as statewide be phased in? Why or why not? If yes, which subprograms should we start with and over what period of time should others be phased in?

If the Commission adopts the definition of Statewide proposed in these comments (i.e. confining it to upstream and midstream activities), the Commission should order the

[18] R. 13-10-005

implementation of the Statewide program concept in the August decision with direction that Program Administrators reflect these changes in their Business Plans.

Question 15: Do you agree with the proposal contained in this ruling with respect to budget sharing for statewide programs? Why or why not?

Budget sharing is appropriate for statewide activities that require local coordination, but a more frequent true up would better align spending with estimates. The proposal includes a 5-year timeframe to true up cost sharing.[19] This period should be shorter to ensure appropriate oversight of spending. The Commission should require the lead PA to state spending projections over the five year period. The Commission should also require the lead PA to file an annual advice letter that compares spending to projections throughout the state and triggers more substantive review if there is a major discrepancy.

Additionally, if attribution of savings is needed for each PA to maintain cost effectiveness, then attribution and cost sharing should be expanded to CCA and REN PAs as well. The Commission may be able to alleviate the need for shared attribution through a different approach to cost effectiveness including those offered in response to Question 2.

Question 16: Should there be any guidelines or limitations on the extent to which non-lead administrators (including other utilities, CCAs, or Regional Energy Networks) could incur expenses to coordinate, monitor, and/or otherwise engage with statewide programs?

Some programs may require regional coordination and there should be accommodation for these expenses. CCAs and RENs should be able to exclude expenses related to coordinating, monitoring, or otherwise engaging with Statewide programs from the TRC unless those

[19] Ruling at p. 8.

programs provide attribution to the CCA or REN. Statewide Programs should be required to make referrals to any local variations of those programs.

Question 17: Do you agree with the idea of encouraging pay for performance elements in the contracts for selected statewide program implementors? Why or why not?

Pay for performance ("P4P") should be included where relevant for upstream and midstream programs. CalTF would be a good forum to develop statewide guidance on P4P. The CEC benchmarking data could inform P4P standards and baselines.

If the Commission includes downstream activities in the definition of Statewide approaches, it should also include P4P. However the Commission should develop protections to: (1) avoid implementors sweeping low-hanging fruit; (2) ensure an emphasis on IDSM; (3) and provide for contractor accountability. Additionally, it will be difficult to achieve substantial savings in hard to reach markets with P4P unless the metrics used to justify payment incorporate elements that are specific to serving hard to reach customers. These metrics should be developed in conjunction with stakeholders, such as the California Energy Efficiency Coordinating Committee ("CAEEC"), or a separate working group like the Low Income Oversight Board ("LIOB").

2. Third-Party Programs

Question 18: Do you agree with the definition of "third-party" in this ruling? Why or why not?

Yes, however the Commission should clarify that third-party programs are entirely downstream programs to avoid duplication with Statewide programs. Downstream programs should only include those that deliver products or services directly to end-use customers (e.g. mail-in rebates, building retrofits, and technical assistance). This will ensure there is clarity about the types of program activities that are subject to the Third Party rules.

Question 19: Is the general outline of the proposal in this ruling for third-party programs workable? Why or why not? Explain.

Both Option 1 and Option 2 are problematic for two reasons: (1) it is unclear how the activities under Third Party Programs would interface with activities under Statewide Programs in the same sector; and (2) it is unclear what role local government EE programs (e.g. CCAs, RENs, LGPs) would serve in a sector if it were bid out to a Third Party. The Commission should address the first challenge by adopting the proposed definition for Statewide Programs described in response to Questions 8 and 9 above while also limiting Third Party Programs to downstream (at the end-user level) efforts. This will create a clear delineation between what is Statewide and what is Third Party. The Commission should address the second challenge by adopting the proposals for local government EE programs described in response to Questions 2 and 3 above (e.g. designating CCAs as default PAs and RENs the option to elect the programs they administer). The Commission should adopt these proposals to provide clarity and ensure CCAs and other local government programs will not lose the right to deliver EE programs.

Option 1 is also problematic because there is no assurance that IOUs will actually engage meaningfully with Third Parties. IOUs may, for example, simply incorporate proposed ideas into their own portfolios in lieu of accepting bids. This distinction makes Option 2 MCE's preferred approach, subject to resolution of the issues raised above, for Third Party Programs.

Question 20: Which third-party option (Option 1 or Option 2) do you prefer and why? Or would you prefer a different option entirely? If so, describe your preferred approach.

Local governments should be able to deliver comprehensive programs in their jurisdictions regardless of the approach adopted for IOUs and Third Parties (see the responses to

Questions 2 and 3 above). CCAs should be designated as default PAs in their service areas, RENs should be able to elect the programs they administer, and other local government EE programs should be preserved and coordinated under a Statewide lead as proposed in LGSEC's comments to this Ruling. Third Parties should be precluded from delivering programs in a particular local government jurisdiction that are duplicative of the local government's EE programs. This would encourage Third Parties to work through bilateral agreements to implement their programs within local government jurisdictions that run their own locally tailored programs.

MCE also proposes that the Public Sector be brought within the scope of local governments and away from IOUs. This organization of program activity is a more natural fit because local governments are embedded in the Public Sector. This could be overseen by the lead local government entity proposed in the LGSEC comments. That entity could help facilitate new local government capacity or solicit bids for implementation in areas that do not currently have a local government entity providing EE programs.

Question 21: If you prefer Option 1 for third-party approaches, are there criteria that administrators should use for determining eligible program targets, sizes or budgets, or should this be determined in the course of formulating the Sector Business Plans?

If the Commission pursues Option 1, these criteria should be determined in the course of formulating Business Plans. The Commission should allow latitude for different IOU PAs to manage it differently, while being mindful of the concern raised in response to Question 19.

As discussed above (in response to Questions 2, 3, and 20), CCAs and RENs should be able to enter into bilateral agreements with third party programs or design and implement their own programs in their own jurisdictions.

Question 22: If you prefer Option 2 for third-party approaches, would you limit the initial focus to the large commercial sector? Why or why not? Or suggest a different focus and rationale for it.

If the Commission pursues Option 2, it should start in sectors where the EE industry has capacity to provide the services that would be put out for bid. This could be accomplished by focusing on sectors that currently have a large proportion of savings delivered by third party implementors. As discussed above (in response to Questions 2, 3, and 20), CCAs and RENs should be able to enter into bilateral agreements with third party programs or design and implement their own programs in their own jurisdictions.

C. General Questions

Question 23: Is the sector business plan process, with utility, program administrator, and stakeholder collaboration, sufficient to inform the development of program designs and solicitation documents for the proposals herein?

Additional guidance from the Commission on program overlap and cost effectiveness would be helpful to focus Business Plan development (as discussed in response to Questions 1 and 2). Solicitation documents will be critical to both the Statewide and Third Party approaches. It is unclear whether the existing review boards are sufficient to provide oversight. This could be initiated and potentially resolved at the CAEECC but thus far participation has been composed primarily of parties to the proceeding with limited discussion from the broader stakeholder community. Additionally, the CAEECC is presently responding to a concern raised by the Commission's Legal Division related to conflicts of interest when market actors participate, especially in the development of solicitation materials. MCE supports the CAEECC providing this oversight function when the conflict of interest issue is resolved and encourages the Commission to facilitate broader stakeholder participation.

Question 24: Are there any other elements or guidance needed from the Commission to ensure that high quality, high-value programs can be effectively implemented across the IOU service areas?

As proposed in the responses to questions above, the Commission should: (1) work to develop a statewide data platform (see response to Question 7); (2) designate CCAs as default administrators in their service areas and provide RENs the opportunity to elect the programs they provide (see response to Questions 2, 3, 19, and 20); and (3) invite a local government lead consistent with the proposal in LGSEC's comments.

Question 25: Are there other criteria the Commission should use in determining which programs should be required to be competitively bid (e.g., because the IOU cost-effectiveness showings have dropped below a certain threshold, etc.)?

No, however the Commission should continue with the sector-based approach to program delivery, as opposed to a program-by-program approach. Discrete programs tend to create silos and the sector-based Business Plans with implementation strategies allow for more customized and comprehensive offerings.

Question 26: How might the CEC's statewide benchmarking and disclosure regulations and program activities for commercial and multi-family buildings be reflected in the statewide and third-party program approaches?

The benchmarking and disclosure regulations and program activities should be: (1) implemented consistently; (2) have related data housed in a statewide database (see response to Question 7) with CalTF supporting standardization of savings claims; and (3) make related data available to other PAs to the extent possible. The statewide benchmarking data could help inform program design (e.g. implementation of AB 802 and setting existing conditions baselines).

Question 27: If you suggest that some or all of the proposals in this ruling be implemented, what is the appropriate timeframe and transition process (if any), and why?

As stated in response to Question 14, the Commission should order the implementation of the Statewide concept in the August decision to be reflected in Business Plans.

Question 28: If you have alternative proposals for statewide and third-party aspects of the energy efficiency program portfolios, please describe them in detail.

(See response to Question 24)

III. CONCLUSION

MCE thanks Commissioner Peterman and Administrative Law Judge Fitch for their thoughtful consideration of these comments.

Respectfully submitted,

/s/
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